IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3952 OF 2006

Gajanan Gopal Belwalkar ...Applicant

vs.

State of Maharashtra & Anr. ...Respondents

Mr.R.Sathyanarayanan for the Applicant
Mr.D.P.Adsule, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : NOVEMBER 20,2006.

P.C.:

1. Rule. Learned A.P.P. waives service for the Respondent. Taken up for hearing forthwith.

2. The challenge in this Application under section 482 of the Code of Criminal Procedure, 1973 is to the order dated 9th December 2005 passed by the learned Metropolitan Magistrate, 22nd Court, Andheri, Mumbai in Case No.3891/PW/2005 (C.R.NO.49/2000).

3. F.I.R. was lodged by M/s. Datamatic Information Technology Ltd. against the Applicant. After investigation, a charge sheet was filed in the Court of Metropolitan Magistrate. By a Judgment and Order dated 12th August 2005 passed in Criminal Application No.5031 of 2005,this court quashed the said F.I.R. and the case on the basis of the said F.I.R.

4. An Application was filed by the Applicant who is the father and Constituted Attorney of the accused for refund of cash security amount of Rs.10,000/- deposited by the Accused as a condition for grant of bail. A submission was made that as the F.I.R. itself has been quashed, the Applicant is entitled to receive the said amount in his capacity as the Constituted Attorney of the accused. The learned Trial Judge rejected the said Application by holding that the cash security can be refunded only to the accused and not to his father on the basis of power of attorney.

5. After having heard the learned Advocate for the Applicant and the learned A.P.P. for the State, I find that the impugned order needs modification. It is true that the amount of cash security must be refunded to the accused who is at present out of India. By providing necessary safeguards, relief can be granted in favour of the original accused. The amount can be refunded by a cheque drawn in the name of the accused which can be received by the Applicant after verification of the power of attorney and in particular authorisation in the power of attorney to accept the amounts and to issue receipts.

6. Application is disposed of by passing the following order:

i) The impugned order dated 9th December 2005 is modified.

ii) The amount of Rs.10,000/- which was deposited by the accused Prashant G. Belwalkar shall be refunded by A/c Payee cheque drawn in the name of the said accused.

iii) The cheque shall be handed over to the applicant after verification of the power of attorney in favour of the applicant and in particular the clause relating to the authorisation for accepting the amounts and for issuing the valid receipts.

iv) Application is disposed of in above terms.

v) Office to issue writ immediately.

JUDGE